IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 865 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHKUMAR BANARSILAL PASI

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/12/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. E.E. Saiyed for the petitioner and learned A.P.P. Mr. H.L. Jani for the respondents.

1. The petitioner has challenged the order of externment passed by the respondent no.2-Deputy Police

Commissioner, Ahmedabad City dated 1-7--2000 in Externment Case no.PCB/HDP/197 against the petitioner in exercise of powers conferred under Sec.56(b) of the Bombay Police Act, 1951 ("the Act" for short) whereby the petitioner is externed for a period of two years from the area of Ahmedabad City and the limits of Police Commissioner, City of Ahmedabad as well as from the continguous area of Ahmedabad District, Gandhinagar District, Kheda and Mehsana District.

The petitioner has also challenged the order passed by the appellate authority, Deputy Secretary, Home Department, State of Gujarat dated 16-9-2000 under Sec.60 of the Act whereby the appeal preferred by the petitioner against the impugned order of externment is rejected.

2. That the Asstt. Police Commissioner, "H" Division, Ahmedabad City served notice on the petitioner under Sec.59 of the Act alleging that a proposal has been initiated to exstern the petitioner for a period of two years from the city and District, Ahmedabad as well as contiguous Districts of Gandhinagar, Kheda and Mehsana in view of prejudicial activities of the petitioner which came to the notice of the authority. That the petitioner was called upon to show cause why such order should not be passed in view of the allegations stated in the notice. That the notice contained the allegations that the petitioner has been collecting instalments by extortion from the merchants in the area of Saijpur Bogha and nearby areas; that the petitioner has been travelling in autorickshaws without making payment of the fare; that the petitioner used to purchase articles from the merchants without making payments and on demand for payment, the petitioner has been threatening the merchants of dire consequences. Not only that the petitioner used to extort money from the people of the area by using force and violence That offences vide CRs nos.I/97 dated 1-1-1997 and 20/99 dated 13-1-1999 have been registered at Naroda Police Station against the petitioner. It appears that the petitioner replied to the said show cause notice and appeared before the authority on 25-10-1999 and also led evidence. The proceedings were concluded on 10-12-1999, however, the respondent no.2 after considering the material produced before him passed the impugned order on 1-7-2000 which was challenged by the petitioner under Sec.60 of the Act, but the Deputy Secretary, Home Department, Sachivalay, Gandhinagar rejected the appeal of the petitioner by order dated 16-9-2000.

3. Learned Advocate Mr.E.E. Saiyed has contended that proceedings against the petitioner were initiated on

25-10-1999 and concluded on 10-12-1999. However, the authority passed the order only on 17-7-2000. The said fact per se suggests that the order is passed mechanically and without application of mind, in asmuchas on account of lapse of time though there was no need to pass the order, the order is passed after inordinate delay. To support the submission, the learned Advocate for the petitioner has relied on and referred to the observations made by this Court in the matter of CHOTHMAL SAGANSINGH RAJPUT VS. STATE OF GUJARAT, reported in 1989(1) GLR p.63.

4. The perusal of the order itself suggests that the entire order is passed on vague material. That no incidents have been set out in the order on which the authority has relied on. Not only that the order does not indicate the nature of offences for which CRs nos. I/97 and 20/99 were registered against the peitioner at Naroda Police Station on 1-1-1997 and 13-1-1997 respectively.

5. That in CHOTHMAL's case (Supra), this Court has observed in paragraph (6) of the judgment that:

".....In externing a person , which is in the public interest, the authorities are expected to act promptly, and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from the particular locality or the District. Definitely such externment orders curtail the freedom of movement of the person concerned. Any latches on the part of the authority concerned cannot be countenanced and it will definitely enure to the benefit of the party concerned and on that score he will be entitled to the benefit of quashing such an order of externment."

6. In the instant case, though rule was issued as early as 3-10-2000, no affidavit-in-reply is filed on behalf of the respondent no.2 controverting the averments made in the petition or explaining the delay which has occasioned in passing the impugned order. The impugned order itself is devoid of any explanation as to on account of whose fault the proceedings were so protracted that the order could not be passed within a reasonable period of six months from the date of initiation of the proceedings which is a serious infirmity and in absence of any reasonable explanation, the impugned order of externment cannot be sustained in law.

7. It is also pertinent to note that the order

passed by the appellate authority is also silent about the aspect of delay in passing the externment order though the contention was specifically raised by the petitioner, and as such, the one page order of the appellate authority is nothing but a mechanical exercise and could hardly be sustained in law.

8. In view of the aforesaid discussion and following the dicta of this Court in CHOTHMAL'S case (Supra), the impugned order of externment as well as the order of the appellate authority rejecting the appeal of the petitioner deserves to be quashed and set aside.

9. As the petition succeeds on the abovestated ground alone, it is not necessary to consider and decide the other grounds raised and canvassed at the Bar.

10. In the result, the petition is allowed. The impugned order of externment dated 1-7-2000 passed by the respondent no.2 in Externment Case no.PCB/HDP/197 against the petitioner and the order of appellate authority passed by the Deputy Secretary, Home Department dated 16-9-2000 u/s.60 of the Act rejecting the appeal against the impugned externment order are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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